

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-184869

DATE:

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MATTER OF: Robert A. Benson - Real Estate Expenses -  
Attorneys Fees

## DIGEST:

Before transferred employee succeeded in selling residence at old duty station, he had entered into three contracts for sale of same property that were not consummated due to inability of purchasers to obtain financing. Employee may not be reimbursed for expenses associated with preparation of those contracts because it is duplicative of cost of contract that resulted in the sale. Cost of incompleated contracts is analogous to loss due to market conditions, which is not reimbursable.

By letter of June 10, 1975, D. F. Sloan, an authorized certifying officer of the Drug Enforcement Administration, Department of Justice, requested a determination as to his authority to pay Mr. Robert A. Benson for certain legal expenses incurred incident to the sale of his former residence.

Under a travel authorization, dated April 22, 1974, Mr. Benson was transferred from New York, New York, to Nogales, Arizona. Because he was unable to sell his residence at his old duty station prior to reporting to his new duty station, he retained an attorney to protect his interests relating to the sale of his home. Apparently due to the condition of the mortgage market, three contracts for the sale of Mr. Benson's home were executed and cancelled because the purchasers could not obtain financing, before the fourth, successful, contract was signed.

Settlement on the sale of Mr. Benson's former residence was held on September 20, 1974. At that time, Mr. Benson paid a real estate sales commission of \$2,760 to Jean Venn Real Estate. The record does not indicate whether Jean Venn was Mr. Benson's agent and the listing broker, or was merely an agent who brought the buyer to the property. In addition, Mr. Benson's attorneys submitted a bill for legal services in the total amount of \$800. The bill is broken down into four parts. The first three relate to the three attempted sales of the property. Each of the three is for the negotiation and preparation of the contract of sale, and

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for services concerning the termination of each transaction. In each case a charge of \$175 is listed. For the legal work associated with the completed transaction, Mr. Benson was charged \$275.

Mr. Benson claimed reimbursement for the entire \$800. He was reimbursed only for \$275. The services listed for the three cancelled transactions were found by his employing agency to be part of the services that should have been performed by the real estate broker and included in the broker's sales commission. Mr. Benson, in his reclaim voucher, contends that the services performed by the broker and the attorney were not duplicative, and that he believes that the attorney's services were necessary because he was required to report to his new duty station before the property could be sold.

The regulation governing the reimbursement of transfer-related legal expenses is paragraph 2-6.2c of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), which provides that:

"Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station \* \* \* to the extent they do not exceed amounts customarily charged in the locality of the residence \* \* \* costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

Although it can be argued the cost of the negotiation and preparation of a standard contract of sale for residential property should be included in the fee paid to the real estate broker, there is no requirement that that course be followed. The respective roles of real estate brokers and attorneys in the negotiation and drafting of contracts for the sale of residential property is a matter of great dispute. See State v. Bander, 56 N.J. 196, 265 A.2d 671 (1970), and New Jersey State Bar Association v. New Jersey Association of Realtor Boards,

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118 N.J. Super. 203, 287 A.2d 14 (1972). Therefore, we do not believe, on the record before us, that it is possible to so cleanly delineate the functions of realtors and attorneys in transactions such as this so as to justify the disallowance of Mr. Benson's claim on the basis stated above.

However, we do believe that Mr. Benson's claim for \$525 for the fees relating to the three incomplete sales transactions should be disallowed. The intent of the FTR provisions relating to the reimbursement of transfer-related real estate expenses is to reimburse one set of authorized expenses relating to one sale and one purchase. In B-185825, April 22, 1976, we held that an employee could not be reimbursed for the cost of drafting a second contract of sale where he was not satisfied with the original contract, because the expenses were duplicative. We believe that the same rationale is applicable here; hence, the cost of preparing one contract of sale is reimbursable, but not the cost of four contracts. We believe that this rationale is also supported by FTR para. 2-6.2e (May 1973) which provides that:

"Losses due to prices or market conditions at the old and new posts of duty. Losses due to failure to sell a residence at the old official station at the price asked, or at its current appraised value, or at its original cost, or due to failure to buy a dwelling at the new official station at a price comparable to the selling price of the residence at the old official station, and any similar losses, are not reimbursable."

The necessity for multiple contracts of sale arose because of market conditions, and that cost would be properly classified as a "loss" due to market conditions.

Accordingly, the voucher may not be certified for payment.

R.F. KELLER,

[Deputy] Comptroller General  
of the United States